

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT W. SHARP and TENNESSEE VALLEY AUTHORITY,
POWER ENGINEERING & CONSTRUCTION, Knoxville, Tenn.

*Docket No. 95-1928; Submitted on the Record;
Issued February 12, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant is entitled to wage-loss compensation for the period following his retirement on March 16, 1990; and (2) whether appellant is entitled to medical treatment for conditions other than the post-surgical osteoarthritis of the right knee.

On July 11, 1975 appellant, then a 47-year-old special equipment operator, sustained a right knee injury when he twisted his knee. Dr. Joe E. Tittle, a Board-certified orthopedic surgeon, referred appellant for an arthrogram of the right knee which revealed degeneration of the medical meniscus and a Baker's Cyst. In an October 1975 report, Dr. Tittle noted a history of a prior knee injury at work in 1971 or 1972.¹ Dr. Tittle reviewed the findings of the arthrogram and diagnosed an aggravation of appellant's knee condition, due to the July 11, 1975 twisting incident. Appellant stopped work on December 24, 1975. He underwent surgery on December 31, 1975, at which time a medial meniscus tear was found. The medial meniscus and the popliteal cysts were surgically removed and appellant returned to work on February 23, 1976.

Following a review of the medical evidence by an Office of Workers' Compensation Programs medical adviser, the Office accepted under claim number A6-123862, that the July 11, 1975 work injury caused an aggravation to a previously torn medial meniscus of the right knee. The Office granted appellant a schedule award for 14 percent permanent loss of the right leg, due to the July 11, 1975 employment injury.²

¹ The record contains no information concerning a claim filed prior to the July 11, 1975 claim for a right knee injury.

² By two separate decisions dated March 14, 1977 and December 22, 1978, appellant was granted a schedule award for a total of 14 percent impairment of the right leg.

On May 10, 1979 appellant twisted his left knee as he fell over a steel object at work. An arthrogram performed on June 4, 1979 revealed a Baker's Cyst and evidence of a tear of the posterior horn by the medial meniscus. Dr. Tittle scheduled appellant for surgery in July 1979.

Under claim number A6-220145, the Office accepted appellant's claim for a torn medial meniscus of the left knee due to the May 10, 1979 injury and approved surgery. Appellant, however, elected to not have surgery based on his concerns that his left knee would respond in the same fashion as his right knee after surgery.

Between 1981 and 1988, appellant obtained further treatment specifically related to continued problems with his right knee. Appellant claimed right knee pain and swelling due to his work on April 10, 1981, which the Office developed under a separate claim and paid appellant for one day off from work.³ Appellant later indicated that he felt entitled to additional compensation based on the frequent giving way of the right knee, which could occur as much as five times in one day. In support of his request for additional compensation, he submitted reports by Dr. Tittle who diagnosed post-surgical degenerative changes, parasthesia and chondromalacia and recommended a sedentary job which did not involve walking on uneven ground or climbing on or off equipment. Appellant was reassigned, in 1986 or 1987, to a position in the tool trailer which was sedentary and involved providing tools to other employees. He also underwent physical therapy for approximately three months in 1987. Thereafter, Dr. Tittle reported no further complaints of pain and indicated that appellant's knees were quiescent. He noted, however, complaints of pain in February 1988, related to standing in a small area and operating a crane with his hands. Dr. Tittle reported later during the summer of 1988, that appellant had been assigned to a different facility where he was not asked to perform duties which placed undue stress on the knees. He later diagnosed in December 1988, fibrositis of the back, in addition to bilateral osteoarthritis of the knees, worse in the right knee than in the left knee.

On May 16, 1990 appellant retired from his position at age 62. The records from the employing establishment indicated that light duty remained available to appellant at the time of his retirement.

The Office denied payment of medical bills for continued treatment of the knee condition.⁴ Pursuant to a request for reconsideration filed by appellant, the Office referred the medical evidence pertaining to his right knee injury to an Office medical adviser, who addressed appellant's back condition beginning in 1988 and his continued right knee difficulties. By decision dated March 13, 1991, the Office vacated its prior decision and accepted osteoarthritis of the right knee due to the surgery on December 31, 1975.

Appellant claimed that he was entitled to further compensation benefits in the form of wage-loss compensation and to a greater schedule award for impairment to both legs as a result

³ Dr. Tittle diagnosed a right knee strain with effusion due to weakness of the quadriceps. Under claim number A6-323138, the Office accepted appellant's claim for right knee strain due to the work incident on April 10, 1981.

⁴ By decision dated September 24, 1990, the Office found a lack of causal relationship between appellant's continued condition and the prior July 11, 1975 injury.

of his injuries to both knees. He submitted a report by Dr. Tittle, who rated appellant's level of impairment to 20 percent of both legs, based on the degree of osteoarthritis which resulted from the medial meniscal tears. Dr. Tittle noted a lack of impairment with respect to range of motion of the left knee and stated that the date of maximum medical improvement of the left knee was 1987. Based on the measurements provided by Dr. Tittle, the Office found a lack of permanent impairment with respect to the left leg, but found that appellant was entitled to a greater schedule award for permanent impairment of the right leg.⁵ Subsequently the Office combined claim A6-123862 and A6-220145 into the initial claim number, A6-123862.

At an oral hearing held on April 14, 1993, appellant advised the Office hearing representative that he did not contest the amount of the schedule award for his right leg, but that he desired wage-loss compensation, based on the level of difficulty he had in continuing to work with his impaired knees. Because he did not contest the schedule award amount, the Office confirmed that his request for a hearing on the schedule award was withdrawn and remanded the case for further development on his request for wage-loss compensation. Four months later, appellant requested an update on his request for wage-loss compensation. In response, the Office advised appellant that further evidence was required to sustain his burden of proof to establish total disability from work due to his knee injuries. Appellant submitted progress reports from Dr. Tittle and his associate who noted a lack of progressive symptoms into 1993 and recommended corticosteroid treatment to control appellant's current symptoms, with total knee replacements to be performed some time in the future. Dr. Tittle related appellant's osteoarthritis of the knees to the multiple employment injuries sustained by appellant and indicated that he felt appellant's bilateral knee pain contributed to his back problems beginning in late 1988.

By decision dated March 27, 1995, the Office denied payment of wage-loss compensation following the date of his retirement on March 16, 1990 and authorized continued treatment for post-surgical osteoarthritis of the right knee, with a denial of further benefits for preexisting osteoarthritis of the right knee or continued care for the left knee.

The Board finds that appellant is not entitled to wage-loss compensation for the period following his retirement on March 16, 1990.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁶

⁵ By decision dated December 4, 1992, the Office granted appellant a schedule award for an additional 6 percent impairment, to equal 20 percent impairment of right leg. By decision dated December 21, 1992, the Office denied appellant's claim for a schedule award for his left leg.

⁶ *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board notes that the term “disability,” as used in the Federal Employees’ Compensation Act,⁷ means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁸ Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn wages.⁹ Whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.¹⁰

While appellant contends that his knee condition interfered with his ability to perform his work prior to retiring March 16, 1990, he submitted no evidence to support his claim. The employing establishment indicated that the light-duty position assigned to appellant remained available to appellant at the time of his voluntary retirement. While he claimed that traveling was difficult for him, he submitted no factual evidence to show his duties changed or medical evidence to show that he was unable to perform the duties assigned to him at the time he retired.

The Board finds that with respect to continued medical treatment for conditions other than the post-surgical osteoarthritis of the right knee, the case must be remanded to the Office for further development.

Dr. Tittle diagnosed osteoarthritis of the left knee due to the meniscal tear, which the Office accepted as an employment-related condition under A6-220145. As the Office medical adviser reviewed the evidence prior to the combining of claims A6-220145 and A6-123862, he did not address appellant’s claim that he continues to suffer from residuals of the left knee injury. Accordingly, there is no adverse opinion in the record to negate the opinion that the osteoarthritis resulted from the accepted employment condition. While Dr. Tittle did not give an explanation for his opinion on the relationship between the osteoarthritis and the medial meniscus tear, the opinion raises an uncontroverted inference of causal relation sufficient to require further development of the case record by the Office.¹¹

⁷ 5 U.S.C. §§ 8101-8193.

⁸ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁹ See *Fred Foster*, 1 ECAB 21 (1947).

¹⁰ See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990). When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity. *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

¹¹ See *John J. Carlone*, 41 ECAB 354 (1989) (where there was no medical opinion contrary to appellant’s claim and the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion).

The decision of the Office of Workers' Compensation Programs dated March 27, 1995 is hereby affirmed with respect to the denial of wage-loss compensation benefits and set aside with respect to the payment of medical benefits for treatment to appellant's left knee.

Dated, Washington, D.C.
February 12, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member